IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

NICHOLAS MICHAEL WILSON,

Appellant,

v.

JENNIFER L. CRAMER and JAMES R. STOWE,

Respondents.

DOCKET NUMBER WD71313

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: August 10, 2010

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable William S. Richards, Judge

APPELLATE JUDGES

Division Two: Joseph M. Ellis, Presiding Judge, and Alok Ahuja and Karen King Mitchell, Judges

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ATTORNEYS

Michaela Shelton
Overland Park, KS

Attorney for Appellant,

Jennifer L. Cramer and James R. Stowe
Blue Springs, MO

Respondents, *pro se*.

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

NICHOLAS MICHAEL WILSON,	)
	)
Appellant,	)
v.	)
	)
JENNIFER L. CRAMER and JAMES R. STOWE,	)
	)
	)
Respondents.	)

WD71313 Jackson County

Before Division Two Judges: Joseph M. Ellis, Presiding Judge, and
Alok Ahuja and Karen King Mitchell, Judges

This is a paternity case. Appellant Nicholas Wilson filed a petition in the Circuit Court of Jackson County, praying for a finding of paternity, a custody determination, an order of child support, and a change of Wilson's alleged son's name ("Son"). Respondents Jennifer Cramer, Son's Mother ("Mother"), and James Stowe filed answers, denying that Wilson was Son's father and pleading that Wilson had failed to state a claim upon which relief could be granted. Respondents pled that Stowe was Son's father. Mother and Stowe also filed a motion to dismiss the petition. Mother and Stowe argued that Wilson lacked standing because Stowe had signed an affidavit acknowledging that he was Son's father ("Acknowledgment of Paternity"), *see* section 210.823,[1] and because the Director of the Division of Child Support Enforcement, Department of Social Services ("Division") had entered an order finding that Stowe was Son's father and entering a child support decree. The circuit court, the Honorable William S. Richards presiding, granted the motion to dismiss, finding that section 210.823 barred Wilson's claims.

REVERSED AND REMANDED.

Division Two holds:

In this case, section 210.826.2 applies in determining who has standing to bring a paternity action. It provides as follows: "[a]n action to determine the existence of the father and

[1] Statutory citations are to RSMo 2000.

child relationship with respect to a child who has no presumed father . . . may be brought by . . . a man alleging himself to be the father." Here, Wilson alleges that he is Son's father. Therefore, he has standing to bring a paternity action under section 210.826.2.

Mother and Stowe argue that section 210.823 bars Wilson's action. We disagree.

By its plain terms, section 210.823 does not deprive anyone of standing to bring a paternity action under section 210.826. Moreover, reading section 210.823 in conjunction with section 210.826, it becomes clear that an acknowledgment of paternity, without more, cannot deprive a party of standing to bring a paternity action. Section 210.826.3 provides that "[r]egardless of its terms, an agreement, other than an agreement approved by the court in accordance with subsection 2 of section 210.838,[2] between an alleged or presumed father and the mother or child, does not bar an action under this section." Thus, under section 210.826.3, the Acknowledgement of Paternity, which, in effect, is an agreement between Mother and Stowe that Stowe would assume the legal obligations of Son's father, cannot deprive Wilson of standing to establish his paternity.

Mother and Stowe argue that the Division's administrative order, which found Stowe to be Son's father, bars Wilson's action. We disagree.

An administrative order may have preclusive effect on a subsequent proceeding if the following conditions are met: (1) the administrative hearing resulted in a judgment on the merits; (2) the issue to be litigated is identical to the issue addressed by the administrative order; and (3) the party to be estopped from litigating the issue was a party to (or was in privity with a party to) the administrative hearing. *State ex rel. Div. of Family Servs. v. White*, 952 S.W.2d 716, 718 (Mo. App. E.D. 1997). In addition, the party to be estopped must have had a full and fair opportunity to litigate the issue decided in the prior proceeding. *Smith v. Smith*, 985 S.W.2d 829, 835 (Mo. App. W.D. 1998).

The Division's order does not have preclusive effect on Wilson's action because (1) Wilson was not a party to the hearing and did not have a full and fair opportunity to litigate the issue; and (2) the Division's order was not a judgment on the merits on the issue of paternity.

Pursuant to section 210.826, Wilson had standing to bring a paternity action. Neither section 210.823 nor the Division's order bars Wilson's claims. Accordingly, we reverse the circuit court's judgment of dismissal and remand for proceedings consistent with this opinion.

Opinion by: Karen King Mitchell, Judge August 10, 2010

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[2] This subsection relates to agreements made and approved at a pre-trial conference in a section 210.826 action to declare the existence or nonexistence of a father and child relationship, and, as such, it is not relevant here, where no such conference was held.